

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JERRY PAULL,	)	CASE NO. 1:05 CR 246
	)	
	)	
Petitioner,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	
	)	
WARDEN BRADSHAW,	)	<u>MEMORANDUM OPINION</u>
	)	<u>AND ORDER</u>
Respondent.	)	

This matter comes before the Court upon Defendant, Jerry Paull's *Motion for Relief from Judgment Pursuant to the Federal Rules of Civil Procedure .60(b)(3)*, and his *Motion for Writ of Mandamus Pursuant to 28 U.S.C. § 1361*. (ECF #104, 105). The government filed a brief in Opposition to the motions. (ECF #106). For the reasons set forth below, the Defendant's Motion is hereby, DENIED.

Mr. Paull's sentence, which followed his guilty plea on three counts of knowing possession of child pornography, was enhanced based in part on allegations by a former acquaintance of Mr. Paull's son, that Mr. Paull had molested him when he was a child. The Petitioner claims that 60(b) relief for the decision denying his §2255 petition is warranted because the government allegedly provided "fraudulent facts" relating to this enhancement for the Court's consideration with regard to that petition, and that they provided fraudulent, or misleading information to the Court of Appeals during the appeal process wherein the sentence was affirmed.

A Rule 60(b)(3) motion must be made within a reasonable time and no more than one

year after the entry of the judgment or order sought to be changed. Fed.R.Civ.Pro. 60(c)(1). The Petitioner in this case filed his motion for relief more than one year after the Court's decision denying § 2255 relief. Although the Petitioner argues that the Court should exercise its discretion to allow the late filing, the Sixth Circuit has held that a "district court does not have the discretion to extend the period of limitations set forth in Rule 60(b)." *Smith v. Secretary of Health and Human Services*, 776 F.2d 1330, 1332 (6<sup>th</sup> Cir. 1985). The motion is, therefore, time barred.

Even if it had been timely filed, the motion would also be denied on the merits. The information presented by the Petitioner does not provide any evidence of fraud or other wrongdoing or misrepresentations by the government. Nor does it bring to light any information that was not raised and considered by the Court in the prior proceedings. Petitioner has had multiple opportunities to present his legal and factual arguments to the Court, and those arguments were not convincing. Nothing in his most recent motion changes the reasoning that supported these prior decisions. All of the facts and legal principles underlying his claims have been considered and addressed. Mr. Paull's most recent reiteration of his dissatisfaction with the result offers no relevant information that would alter that outcome. Petitioner's motions (ECF #104, 105) are DENIED.

/s/ Donald C. Nugent  
DONALD C. NUGENT  
United States District Judge

DATED: October 1, 2012